



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 28, 1994

Mr. Jerry E. Drake, Jr.  
Assistant City Attorney  
City of Denton  
Municipal Building  
Denton, Texas 76201

OR94-820

Dear Mr. Drake:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25650.

The City of Denton (the "city") received a request for:<sup>1</sup>

All claim forms submitted to the city in 1993 and to date in 1994 requesting compensation for automobile damage resulting from street defects which include, but are not limited to, potholes, sinkholes, construction and excavation.

The forms in question are notices of claims made against the city by individuals alleging that the city is responsible for damage to their automobiles. Each claim is forwarded to the city's claims representative for investigation and disposition. You state that all of the claims made in the requested claim forms have been denied by the city and that the

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<sup>1</sup>The requestor sent the city three separate requests seeking automobile damage claim forms, with the first request dated February 18, 1994. A governmental entity has an obligation to make a good faith effort to locate requested records. Open Records Decision No. 561 (1990) at 8. However, from the correspondence you submitted, it appears that representatives of the city were negotiating with the requestor to identify the precise information requested. Although a governmental body has only ten days after receipt of a written request for information to seek a decision from the attorney general about applicability of exceptions to the Open Records Act, if there is *legitimate* confusion about the request the governmental body may ask the requestor to narrow the request.

Because it appears that the city was informally trying to resolve the request, the ten days did not begin until the requestor's final letter of March 25, 1994, which was sent after the informal discussions ended. The city then sought an opinion from this office April 4, 1994, within the ten day period. Gov't Code §§ 552.301, .302; Open Records Decision No. 333 (1982) at 2-3.

statute of limitations during which a lawsuit may be filed against the city on the basis of these claims has not yet run on any of the claims. You indicate the city anticipates litigation will occur as a result of some of these claims and argue that the claim forms are excepted from required public disclosure by section 552.103(a) of the Government Code.

552.103(a) excepts from disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party . . . ; and

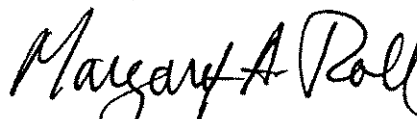
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103, a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that judicial or quasi-judicial proceeding. Open Records Decision No. 555 (1990) at 2. However, information cannot be withheld under section 552.103 if the opposing party in the litigation has previously had access to it; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

In this case, even assuming that you reasonably anticipate litigation, we conclude that section 552.103(a) does not except the requested information from disclosure. The individuals who may bring lawsuits against the city have already had access to the requested information, as they are the ones who filled out the claim forms. Furthermore, with regards to these claim forms, we do not see how one claim form could be related to another claim. All of the forms we reviewed relate to incidents that occurred in different locations. Therefore, you may not withhold the requested claim forms under section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/RHS/KHG/rho

Ref.: ID# 25650

Enclosures: Submitted documents

cc: Ms. Susan Ayala  
City Hall Reporter  
Denton Record-Chronicle  
P.O. Box 369  
Denton, Texas 76201  
(w/o enclosures)